

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM DEAN SHORT,

Defendant.

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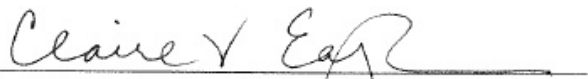
Case No. 04-CR-0178-CVE

OPINION AND ORDER

Now before the Court is the unopposed motion to strike allegations from the indictment filed by defendant William Dean Short (Dkt. # 13). The sentencing allegations were incorporated in the indictment after the Supreme Court's decision in United States v. Blakely, 542 U.S. 296 (2004), but before the Court's decision in United States v. Booker, 125 S.Ct. 738 (2005). The sentencing allegations represented an effort by the Government to permit the jury to make a determination of the various sentencing factors applicable in this case, in the event that the Supreme Court decided that such a determination would be required to preserve the defendant's Sixth Amendment rights while permitting mandatory application of the United States Sentencing Guidelines. See Government's Response to Defendant's Motion to Strike Allegations from the Indictment (Dkt. # 15). However, in light of the Supreme Court's holding in Booker rendering the Guidelines advisory in nature, such a jury determination is not required. Accordingly, after Booker, the sentencing allegations constitute mere surplusage and should be stricken.

For the reasons set out above, the Court finds that the sentencing allegations alleged in the indictment should be stricken, and the defendant's motion (Dkt. # 13) is hereby **GRANTED**.

IT IS SO ORDERED this 2nd day of September, 2005.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT